IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 587 of 1998

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYANTIBHAI MOHANBHAI - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,MS REKHA H KAPADIA for Appellant(s) :
MR K.P. RAVAL, APP, for Opponent

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 27/06/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.0 The present appeal has been filed against the judgement and order of conviction and sentence dated 25th March 1998, passed by the learned Additional Sessions Judge, Nadiad, in Criminal Case No.135 of 1997 for the alleged commission of offences punishable under sections 302 of Indian Penal Code and under section 135 of the Bombay Police Act, whereby the appellant-original accused was convicted and imposed Rigorous Imprisonment for life and fine of Rs.2000/-, in default, simple imprisonment for one year for the commission of offence under section 302 of IPC and simple imprisonment for one month for the commission of offence under section135 of Bombay Police Act. It was further ordered that all the sentences should run concurrently.

2.0 This appeal has been listed in our board in the month of June 2007 wherein we have heard Ms. Kapadia, learned Advocate for the appellant and Mr. K.P. Raval for the State.

3.0 The prosecution case, in short, are as under:

3.1 On 15th May 1996 P.S.I Rathod was present in Nadiad Town Police Station. At that time PSO Chhaganbhai Rambhai received a Vardhi from Medical Officer Kokilaben Shah of Civil Hospital, Nadiad. He registered the same in the Police Station Diary and the same was handed over to PSI Rathod for taking further steps. PSI Rathod therefore went to Civil Hospital, Nadiad where he came to know that injured Nitesh Ranchhodbhai Samava has succumbed to the injuries. PSI Rathod, therefore, recorded complaint of Manjuben Ranchhodbhai Bhikhabhai.

3.2 According to the complainant, the plastics collected from Vatva by her son Nitesh, his partner Shankarbhai Bachubhai Vasava and Natubhai Gosai were kept at a place slightly away from the complainant's house and the segregation of plastic and other obsolete items was being done there. At this time, the complaint and her husband had gone for selling fruits with their fruit cart on mill road, Nadiad. Thereafter, they returned home. At that time, the complainant was informed by one Shri Shivabhai, who stays in the same locality, that her son Nitesh was stabbed by one Mohanbhai Vaghari and that Nitesh was lying in front of the informer's place.

3.3 On hearing this, the complainant and her neighbour Kalubhai

rushed to the spot and saw that Nitesh, the son of the complainant was stabbed in the middle of the chest and he was lying in a pool of blood. The complainant and Kalubhai, therefore, took Nitesh in an autorikshaw to Civil Hospital for treatment where the victim was examined and was declared to be dead.

3.4 PSI Rathod, after recording the said complaint, sent the same to Nadiad Town Police Station which has been registered as Crime Register No.I 243 of 1997 for the offence under section 302 of Indian Penal Code and section 135 of the Bombay Police Act with the said Police Station. After registering the same the concerned PSO has made his endorsement and case has been handed over to PSI Rathod for further investigation. On receiving the same PSI Rathod went to Civil Hospital along with relevant papers where he has prepared Inquest Panchnama in the presence of Panchas, filled up “Marnotar” Form and prepared Yadi for postmortem of the body and sent the same i.e. inquest panchnama, “Marnotar” form, Yadi along with the dead body etc., for the purpose of performing postmortem. He has thereafter recorded statement of Shankerbhai Bachubhai (PW3 - Exh.11)and visited the scene of offence. As the name of the accused has been disclosed at the time of recording the complaint, he had put the police machinery into motion for the purpose of searching the accused and the

appellant has been arrested. Thereafter PSI Rathod completed all the necessary formalities.

3.5 The appellant accused has shown willingness to produce muddamal weapon Gupti and therefore he has called panchas, prepared primary panchnama and along with accused, panchas and police personnels went in a police vehicle as instructed by the appellant accused. The appellant-accused took them to Manjipura Road via Jawaharnagar Railway Crossing. When they reached Manjipura Road, he requested the driver to stop the vehicle, got down from the vehicle and proceeded to a nearby toilet followed by panchas and police personnels. The toilet was not in use and from the toilet the appellant-accused took out and produced the mudamal weapon Gupti and the same has been seized and panchnama to that effect has been prepared there itself. The investigating officer prepared the panchnama, recorded statements of various witnesses. Muddmal Gupti was sent to Forensic Science Laboratory. Yadi was sent for preparing the map of the scene of offence.

4.0 At the end of the investigation chargesheet has been filed by the investigating officer in the concerned court. As the charge against the present appellant is under section 302 of IPC and 135 of the Bombay

Police Act, and as the accused is required to be tried by Sessions Court, the learned Magistrate has committed the case of the appellant-accused to the Court of learned Sessions Judge, Kheda at Nadiad.

4.1 On receiving the case it has been numbered as Sessions Case No.135 of 1997 and the District Judge has transferred the case to the Court of learned Additional Sessions Judge, Nadiad. The learned Additional Sessions Judge, Nadiad framed charges against the appellant. The appellant has denied the charges and prayed for trial.

4.2 To prove guilt against the appellant accused the prosecution has examined the following witnesses:

[1] PW1 – Dr. Kokilaben Jayantilal Shah (Exh.6), who has performed the postmortem, submitted and proved the same.

[2] PW2 – Manjuben Ranchhodbhai (Exh.9) who is the complainant and mother of the victim, through whom prosecution has proved the complaint (Exh.10).

[3] PW3 - Shankarbhai Bachubhai Vasava (Exh.11) who is the star witness of the prosecution case and who has fully supported the say of the prosecution. As per the say of the prosecution he was present at the time of the incident along with deceased and other persons and he has

informed the mother of the victim about the incident.

[4] PW4 – Atulbhai Hakabhai Gohil (Exh.15) who is the panch witness of discovery panchnama. But he has not supported the say of the prosecution and has been declared as hostile witness.

[5] PW5 – Chimanbhai Devasibhai Parmar (Exh.16). He is also a panch witness of discovery panchnama who has also been declared as hostile.

[6] PW6 – Rajubhai Amarsinh (Exh.17), who is panch witness of scene of offence.

[7] PW7 – Vajesinh Vakhatsinh Rathod (Exh.19), PSO, Nadiad Police Station , who, on receiving the station diary entry Vardhi, went to the civil hospital, recorded the complaint of the complainant Manjulaben and offence has been registered against the accused under section 302 of IPC and section 135 of Bombay Police Act. He was the investigating officer who submitted the chargesheet.Through him the prosecution has proved Yadi, Inquest Panchnama, etc.

4.3 Except the aforesaid witnesseses, the prosecution has not examined any other witness, but the prosecution has produced documentary evidence vide Exh.5 and placed reliance and proved the

following documents:

1. Complaint Exh.10
2. Inquest Panchnama (Exh.12)
3. Discovery Panchnama (Exh.21)
4. Panchnama of scene of offence (Exh.13)
5. Postmortem Report (Exh.8)
6. Telephon Vardhi (Exh.20).
7. Forwarding letter to FSL (Exh.22).
8. Receipt received from FSL (Exh.23)
9. Notification issued by District Magistrate (Exh.25)
10. Map of scene of offence (Exh.26).

4.4 On submission of the closing purshis learned Additional Sessions Judge has recorded further statement of the accused under section 313 wherein he has denied all the incriminating evidence and lastly he has stated that he has been falsely involved in the crime in connection with the incident and that he is innocent.

5.0 After giving opportunity to the respective parties, learned Additional Sessions Judge has delivered the judgement convicting the appellant accused as stated hereinabove against which the present appeal has been filed.

6.0 Ms Rekhaben Kapadia, learned Advocate for the appellant and Mr.K.P. Raval, learned APP for the State have taken us through the oral as well as the documentary evidence including the recent judgement of the Apex Court.

6.1 Mrs. Rekhaben Kapadia, learned advocate for the appellant submitted that the appellant is innocent person and he has been falsely involved in the crime. According to her the complainant is the mother of the victim and therefore she is an interested person and that she is not the eye-witness of the incident and therefore her evidence does not carry much weight for the purpose of deciding the case against the appellant. It has been submitted that the Panchas of the discovery panchnama have not supported the prosecution case and in absence of the evidence of discovery panchnama, the prosecution case has become weak and therefore the Court should consider the case keeping in mind the above aspect of the matter. She submitted that the whole prosecution evidence is based on the star witness Shankerbhai (PW3 - Exh.11) and according to her he is also an interested witness as he is the friend and business partner of the victim. She therefore submitted that solely on the basis of his evidence the appellant cannot be convicted in such a serious offence. She further submitted that in the FSL Report, bloodstain has been found on weapon for which the group could not be decided by the FSL and therefore it cannot be said that the same has been used by the appellant for the crime in question. It has been submitted that even if it is assumed that the discovery panchnama in toto is proved, then also the weapon which has been allegedly produced by the accused was accessible to all concerned and

therefore no reliance can be placed on the discovery panchnama. She therefore submitted that the appeal deserves to be allowed.

7.0 Mr.K.P. Raval, learned APP submitted that Shankerbhai Bahcubhai Vasama (Exh.11) is the star witness of the incident. He submitted that the presence of this witness is natural one and cannot be doubted. It has been submitted by him that Shankerbhai along with other witnesses were there at the time of incident, at the earliest opportunity he went to call the mother of the victim and he has narrated the incident to the mother of the victim and in turn the mother of the victim had filed the detailed complaint.

7.2 Mr. Raval submitted that merely because he is the friend or business partner of the victim cannot be a ground to discard the evidence of this witness, if otherwise it is trustworthy, believable and natural one. Mr. Raval submitted that it is true that panchas of discovery panchnama have not supported the same, but only on that ground the evidence of panchnama cannot be discarded. According to him the law on this point is already settled and even if panchas have not supported the panchnama, then also court can rely upon the discovery panchnama on the basis of evidence on record. It has been submitted that the weapon in question has been produced by the accused himself and

the same has been proved by panchnama. Apart from that the muddamal Gupti and the accused have been identified by the witness in the court. According to him the medical evidence and the evidence of witness tally and therefore if FSL could not decide the blood group, merely on that ground the evidence cannot be discarded.

7.3 He further submitted that even the motive for the offence is established from the evidence on record. It has been further submitted that at the time of the incident there was light from the nearby electric pole and there was also light from the house of PW3. He submitted that even prior to the incident there was altercation between the accused as well as the other side and therefore the question of not identifying the accused does not arise.

7.4 Mr. Raval further submitted that the accused and other side were known to each other and there is business relation between them. Lastly it has been submitted that there is a serious crime wherein a person has been killed by the appellant by deadly weapon using the same on the vital part of the body as a result of which he succumbed to the injuries on the spot and therefore he submitted that this is not a fit case where court should interfere and the appeal deserves to be rejected.

8.0 We have gone through the documentary as well as the oral evidence which has been shown by the respective parties as well as the recent judgement in support of evidence on record. It is true that the case of the prosecution is based solely on oral evidence of Shankerbhai Bachubhai Vasava (PW3) who is the star witness of the prosecution. When the case of the prosecution is solely based on an evidence of one eye witness, court should look into it minutely, carefully and if the evidence is found trustworthy, then the court can certainly rely upon the evidence of the sole witness and conviction can be based thereon.

8.1 We have minutely examined the evidence of witness Shankerbhai Bachubhai (PW3)-Exh.11) in detail. He has narrated the facts in detail. He stated about the altercation which has been taken place between the appellant and the victim and it is also established from his evidence that he had tried to intervene in the altercation. At that time even the wife of the appellant had also arrived at the scene of offence. Thereafter the appellant went to his house and came back with muddamal deadly weapon Gupti and he has straightaway given gupti blow on vital part of the body of the victim as a result of which the victim has succumbed to the injury on the spot. He has further deposed that thereafter appellant accused run away towards Jawaharnagar. This

witness thereafter went to the house of the victim and informed the mother of the victim Majulaben about the incident, came back to the scene of offence and the victim had been taken to the civil hospital, Nadiad wherein on examination he has been declared dead by the doctor. This witness has been thoroughly cross-examined by the learned Advocate for the appellant in the court below, but nothing contrary has come out to shake the evidence of this witness. We also fully agree with the arguments advanced by the learned Advocate for the State that it has been established from the Panchnama of scene of offence as well as from the evidence of above witness that there was street light from the nearby pole and light from the house of appellant. We found his evidence trustworthy and free from all doubt. His reasoning is natural one as they were doing work of separating plastic material waste together and the appellant was also interested in the same. Therefore altercation has taken place which resulted into the attack.

8.2 From the evidence of witnesses as well as from the documentary evidence it has been established that it is not the case where after altercation there was sudden provocation as a result of which the incident has taken place. In this case first there was an altercation between the victim and the appellant, thereafter father of the appellant

came along with a stick and again there was altercation. In the meanwhile wife of the appellant came, the witness tried to intervene and in the meanwhile appellant went to his house and came back with Gupti and straightaway inflicted blow on the vital part of the body of the victim. Therefore it cannot be said that the incident has taken place as a result of a sudden provocation. But one can safely say that there was well planned murder for which appellant has used deadly weapon and inflicted injury on the vital part of the body.

8.3 Postmortem note and other documents support the say of the prosecution which tally the injury received by the deceased. The weapon as well as the accused have been identified by Shankerbhai, the eye witness to the incident. They had business relations and they were known to each other and as there was light at the scene of offence and prior to the incident altercation has taken place, the question of misidentification does not arise at all.

8.4 Apart from that the appellant himself has shown willingness to produce the weapon in question by way of discovery panchnama and the same has been proved by the prosecution by evidence of concerned police officer. The evidence of the Police Officer is trustworthy and believable. The discovery Panchnama has got support from the witness

Shankerbhai who has also identified the muddamal Gupti and has categorically stated that this is the same muddamal which was used by him at the time of the incident and therefore we believe the say of the prosecution witness.

9.0 On a total appreciation of the entire evidence on record, we are of the opinion that the prosecution witnesses have supported the case of the prosecution and the prosecution is able to prove the case against the accused and therefore we do not find any merits in the appeal. We are in complete agreement with the reasonings adopted and findings arrived at by the Sessions Court. The appeal is, therefore, dismissed.

10.0 A fax message has been received from the jail authority wherein it is stated that the appellant had remained absconding from 31.3.2002 to 28.8.2006 i.e. for a period of 2312 days and thereafter he has been arrested by the police and from that day he has been undergoing sentence. There is no reason to disbelieve the say of the Jail Authority.

[R.P. DHOLAKIA, J.]

[K.S. JHAVERI, J.]

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